

Pre-legislative public consultation on financial redress for historical child abuse in care

Executive Summary

March 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

Pre-legislative public consultation on financial redress for historical child abuse in care

Executive Summary

Simon Anderson, Dawn Griesbach, Becki Lancaster, Alison Platts
and Jennifer Waterton

Simon Anderson Consulting and Griesbach & Associates

Executive summary

1. The Scottish Government has committed to introducing a statutory financial redress scheme for victims / survivors of abuse in care. Building on earlier consultation and engagement work, in September 2019, the Scottish Government issued a public consultation, inviting views on its specific proposals for the establishment of such a scheme. Findings from an independent analysis of the responses are summarised below.

The response to the consultation

2. In total, 280 responses to the consultation were received. Of these, roughly four out of five (82%) were from individuals, while the remainder (18%) were from organisations. Of the individuals who responded, around nine out of ten (91%) identified as a survivor of abuse in care.

3. The consultation comprised a mix of closed (quantitative) and open (qualitative) questions. As with all consultations, the views submitted and presented in this report are not necessarily representative of those of the wider public or, in this case, those of the victim / survivor community as a whole.

4. A small number of questions were not well understood by all respondents – either because of the inherently complex or technical character of the issue being asked about, or a degree of ambiguity in how the question was worded.

5. Some individuals drew on their own experience of abuse in care to illustrate or explain their answers.

Areas in which there was broad support for the proposed approach

6. There was broad support for many of the general principles and some of the specific proposals outlined in the consultation document.

- ◆ Around 9 out of 10 of all respondents (88%) agreed with the proposed wording of the **purpose** of the scheme, though this was considerably higher among individuals (93%) than organisations (61%).
- ◆ The **guiding principles** proposed for the redress scheme were widely supported (by 94% of all respondents).
- ◆ A large majority of respondents (94%) also agreed with the proposed **definition of abuse**.
- ◆ Overall, 79% of all respondents agreed with the proposal to limit eligibility for financial redress to situations in which institutions and bodies had '**long term responsibility for the child in place of the parent**'. However, while 85% of individuals agreed, only 46% of organisational respondents did so.
- ◆ There was widespread support for the proposals to allow **child migrants** and **those with criminal convictions** to apply – although, in relation to the latter,

some respondents argued that eligibility (or the level of payment) should take account of the nature of any conviction.

- ◆ The difficulties facing applicants in documenting their in-care experience were widely noted and there was almost universal support (98%) for the proposal for the redress scheme to have the **power to require bodies or organisations to release relevant documentation**.
- ◆ A large majority of both organisations (95%) and individuals (88%) agreed that individuals should be able to give **oral testimony** in support of their application (but should not be required to do so).
- ◆ With regard to the **assessment of claims**, there was broad agreement that there should be no 'hierarchy' in terms of **different types of abuse** as a means of determining the level of individually assessed Stage Two payments. Although some respondents said all cases should be treated the same, there was greater support for cases to be assessed in a 'holistic' way, taking account of all circumstances, and a range of factors (including length of time in care and nature of the abuse). A recurring view was that the impact of the abuse should be key in determining payments.
- ◆ There was widespread support (96% of all respondents) for the suggestion that the scheme should offer **assistance to victims / survivors** in obtaining documentary records required for an application. Respondents offered a range of reasons for this, including the potential distress and emotional upheaval associated with the application process; the inherent difficulties of navigating complex and unfamiliar systems; barriers relating to literacy, IT skills, geographical location and health or disability; and the limited resources (of various kinds) available to some victims / survivors.
- ◆ The principle of allowing applications from **next-of-kin** was widely supported (in cases where the individual who had been abused in care was now deceased). Respondents said such payments were 'fair' or 'appropriate', or that next-of-kin were 'entitled' to payments that would otherwise have gone to their deceased relative. Such payments would also recognise the significant impact of abuse on whole families; acknowledge the suffering of the deceased family member; and provide closure for their next-of-kin. Organisations in particular said that that next-of-kin provision was in line with standard legal principles and the rules of other similar schemes. However, there was a range of views about how next-of-kin might be defined and how the proposal might be put into practice.
- ◆ Three-quarters of all respondents (75%) thought that **anyone who has received a payment from another source (such as a civil court case) should still be eligible** to apply to the redress scheme. Respondents commonly said the scheme should be open to all, and that this was the fairest or best approach. Just over half of all respondents thought that redress payments should take account of any payments received from other sources.
- ◆ There was general agreement (94% overall) that organisations bearing responsibility for historical child abuse should **contribute financially** to the redress scheme. This was seen as a way for these organisations to 'take

responsibility' for past wrongs and to acknowledge failings in their duty of care. Organisational respondents (particularly care providers) thought financial contributions should be 'proportionate' and 'fair'.

- ♦ Almost all respondents (97%) agreed with the proposal that there should be **consequences for those responsible who do not make a 'fair and meaningful' contribution**. However, organisations often raised caveats, pointing out that what constitutes a 'fair and meaningful' contribution was still to be determined. Organisations often suggested that refusal to contribute to the scheme should be dealt with on a case-by-case basis.
- ♦ A large majority of both individuals and organisations supported many of the proposals of how the scheme should be administered, including those relating to the establishment of a **Decision-making Panel** (83%), a **Survivor Panel** (96%), and a **new public body** (83%). There was a general view that membership of the Survivor Panel should be diverse and representative of the full range of victim / survivor experiences and perspectives.
- ♦ There was widespread consensus among individuals and organisations that **joint administration** of financial redress and wider reparations would be helpful. Those supporting such an arrangement thought it would offer benefits in terms of a single point of contact, better signposting and ease of access for victims / survivors to the full range of practical and emotional supports available.
- ♦ Respondents were almost unanimously in favour (97%) of **wider reparations** being available to everyone who meets the eligibility criteria for the redress scheme. They also strongly supported priority access to wider reparations being given to certain groups (for example, the elderly and seriously ill).
- ♦ There was general consensus that a **personal apology** should be given to victims / survivors of in-care abuse alongside a redress payment (87%) and that a **dedicated support service** for in-care victims / survivors would (continue to) be needed once the financial redress scheme is in place (96%).

Areas in which there was less support or views were mixed

7. There was less consensus (and sometimes a degree of uncertainty or confusion) about a small number of issues of principle and a range of concrete proposals about how the scheme might operate in practice.

- ♦ Proposals that were seen to **restrict eligibility** for the scheme were not widely supported. For example, some of those who responded were concerned or uncertain about the reference to 'institutions and bodies having long-term responsibility for the child in place of the parent' and there was only minority support for the specific proposals to exclude those abused in fee-paying boarding schools (44%) and hospitals (41%) where the institution did not have long-term responsibility in place of the parent. There was particular concern that some groups of victims / witnesses might be unfairly or arbitrarily excluded from the scheme.

- ◆ Although there was a very high degree of consensus around the proposed definition of abuse, views were more mixed in relation to the question of what should constitute '**historical**' abuse. Overall, 61% agreed with the proposed cut-off date of 1 December 2004. (However, some respondents, and especially individuals, found this question difficult to understand or to answer.)
- ◆ In terms of the **evidence that should be required for a Stage One application**, respondents generally supported the use of (i) a signed declaration by the applicant that they had suffered abuse, (ii) a short written description of the abuse and its impact, and (iii) any existing written statement from another source which provides details of the abuse. However, there was no clear consensus about which of these three forms of evidence should be preferred.
- ◆ In relation to **Stage Two applications**, organisations were somewhat more likely to prioritise the use of third-party documentary evidence while individuals were more likely to favour oral or written evidence provided directly by the applicant. There was also a mix of views on whether different types of evidence should be *required* or *allowed*, or used in combination for corroborative purposes, and where the balance should be struck between sufficiency of evidence and the need to ensure that the scheme was victim-centred, flexible and empowering.
- ◆ Respondents also mentioned a broad range of **factors** they thought should be taken into account in determining levels of payment. The general impact of the abuse was most commonly mentioned here, but some respondents identified particular types of impact – including mental and psychological harm, physical injuries and disabilities, and general consequences for relationships, health, education and employment.
- ◆ Just over half of respondents (54%) agreed that any **previous payments** (e.g. those received through civil court action) should be taken into account in assessing redress payments, although organisations were markedly more likely than individuals to think this (86% compared with 49%). There were three main themes in the views of those who agreed, relating to (i) principles of fairness and equality, (ii) concerns about double payments, and (iii) questions about how any previous payment might be taken into account. Among those who disagreed, a common view was that individuals should not be penalised for having pursued another source of compensation or justice at a time when redress had not been an option.
- ◆ Most respondents (57%) agreed that applicants should **choose between accepting a redress payment or pursuing a civil court action**. However, there was considerable variation by organisational type – for example, while all local authorities / public sector partnerships agreed, all third sector respondents disagreed. There was a lack of clarity about the way individuals had understood and answered this question, meaning that caution should be exercised in interpreting the responses from individuals.

- ◆ Support for applicants having to choose mainly focused on concerns about double payments – respondents said these should be avoided as a matter of legal principle and so that responsible bodies were not penalised twice. Opposition to applicants having to choose focused on the different purposes of redress and court action, with some respondents also pointing out that the system could and should be designed to take account of double payments. However, it was common for respondents (both those who agreed and those who disagreed that respondents should have to make a choice) to stress (i) the importance of personal choice on this matter, and (ii) the importance of good quality legal advice to assist claimants in making a decision.
- ◆ With regard to next-of-kin applications, there was no clear consensus on a **cut-off date**. However, 17 December 2014 was the option that attracted the highest level of support (42%), with respondents noting that this date was aligned with the announcement of the Scottish Child Abuse Inquiry, and would maximise the number of eligible individuals. Similarly, there were mixed views about the **scale of payment** that next-of-kin should receive, with 100% being the option attracting most support (from 56% of all respondents).
- ◆ There was general agreement that those organisations bearing responsibility for abuse should make a financial contribution to the scheme, but less consensus about exactly **who should be considered responsible**. Care provider organisations, local authorities, the Scottish Government and individual perpetrators were all mentioned in this context, especially by individual respondents. Organisational respondents highlighted the challenges and complexities of identifying the organisations responsible.
- ◆ Organisations and individuals offered different types of comments about what would constitute **fair and meaningful financial contributions** to the scheme. In general, organisations said they could not answer this question without further information. By contrast, individuals often suggested specific sums or percentages of the total redress payment (e.g. 25%, 100%).
- ◆ Individuals were more likely to view contributions from organisations bearing responsibility for abuse as an issue of **justice** and so were less likely to countenance flexibility in relation to the level or timing of any such contributions made. Organisations, on the other hand, were less likely to support the idea of upfront contributions and more likely to consider that the **impact on current services** should be taken into account (92% compared with 37% of individuals).
- ◆ There were mixed views about **where the scheme administration should be based**. The most common suggestions were Edinburgh, Glasgow or 'somewhere in the Central Belt'. Another perspective, however, was that the scheme should have multiple locations, a 'hub and spoke' or mobile model, or a significant outreach function.
- ◆ In relation to the question of what the new public body should be called, respondents proposed both general principles and a wide range of specific

names. It was suggested that the views of victims / survivors should be paramount here, perhaps canvassed by means of a vote.

Recurring themes

8. There were also some important recurring themes across different questions:

- ◆ How the scheme should operate – in particular, the need for it to be clear and simple, accessible and victim / survivor-centred in terms of, for example, the documentation associated with the application process, evidential requirements, and where the scheme administration might be located
- ◆ Whether the details and operation of the scheme should be subject to review / revision, the nature of the governance arrangements, and the extent of involvement of victims / survivors in those
- ◆ The need for an appeal / review procedure for individual cases
- ◆ The need for the scheme to complement, and be consistent with, existing support for victims / survivors, legislation and routes to redress – in order to ensure both that the demands on victims / survivors are minimised and to avoid legal complications arising from the use of different definitions
- ◆ The need for applicants to be given appropriate support (both practical and emotional) in connection with applications made to the scheme and more generally and for special provisions to be made for those lacking mental or legal capacity
- ◆ The widely held view among individuals that ‘abuse is abuse’ and the implications of this for how different types of abuse and its impact should be assessed and treated within the scheme
- ◆ The need to balance robustness and transparency with a commitment to listening to, giving voice to and believing the accounts of victims / survivors
- ◆ The difficulties faced by some victims / survivors (especially those who are older) in accessing evidence of time spent in care or the abuse itself.

9. In general, organisations were more likely than individuals to express concerns about:

- ◆ Evidence thresholds and standards of proof
- ◆ Clarity of definition and consistency with wider legislation and practice
- ◆ The scope for particular groups (e.g. some people abused in the context of fee-paying boarding schools or long-term hospitals) to be excluded
- ◆ The absence of sufficient insurance cover (particularly from local authorities) to cover organisations’ financial contributions to the scheme
- ◆ How financial contributions from responsible organisations will be determined, and how the potential impact on current and future service provision will be managed.

10. By contrast, individuals were especially likely to be concerned about:
- ◆ Ensuring that the application process and administration of the scheme is inclusive, accessible and easy to understand
 - ◆ The difficulty of evidencing in-care status or abuse, particularly for older applicants and next-of-kin
 - ◆ The role and voice of victims / survivors in the process as a whole.



© Crown copyright 2020



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-639-7 (web only)

Published by The Scottish Government, March 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS714446 (03/20)

W W W . g o v . s c o t